



**Billing Code: – 6560-58**

## **GULF COAST ECOSYSTEM RESTORATION COUNCIL**

**[Docket No. 105XX2015-1111-03]**

### **National Environmental Policy Act Implementing Procedures and Categorical Exclusions**

**AGENCY:** Gulf Coast Ecosystem Restoration Council.

**ACTION:** Issuance of Final Procedures.

**SUMMARY:** The Gulf Coast Ecosystem Restoration Council (Council) is hereby issuing final procedures for implementing the National Environmental Policy Act (NEPA). These procedures include categorical exclusions (CEs) of actions the Council has determined do not individually or cumulatively have a significant effect on the human environment and, thus, are categorically excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) under NEPA.

**EFFECTIVE DATE:** [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

On July 6, 2012, the President signed the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (“RESTORE Act” or “Act”) into law. The Act establishes a new trust fund in the Treasury of

the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). Eighty percent of the administrative and civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* Oil Spill will be deposited into the Trust Fund. Under terms described in the Act, amounts in the Trust Fund will be available for projects and programs that restore and protect the environment and economy of the Gulf Coast region.

The Act is focused on the Gulf Coast region and has five components. The Direct Component, administered by the Department of the Treasury, sets aside 35 percent of the penalties paid into the Trust Fund for eligible activities proposed by the five Gulf Coast states – Alabama, Florida, Louisiana, Mississippi, and Texas – including local governments within Florida and Louisiana. The Council-Selected Restoration Component sets aside 30 percent of the penalties, plus half of all interest earned on Trust Fund investments, to be managed by a new independent entity in the Federal government called the Gulf Coast Ecosystem Restoration Council (Council). The Council is comprised of members from six Federal agencies or departments and the five Gulf Coast states. One of the Federal members, the Secretary of Commerce, currently serves as Chairperson of the Council. The Council will direct Council-Selected Restoration Component funds to projects and programs for the restoration of the Gulf Coast region, pursuant to an Initial Comprehensive Plan that has been developed by the Council. Under the Spill Impact Component, the Gulf Coast states can use an additional 30 percent of penalties in the Trust Fund for eligible activities pursuant to plans developed by the states and approved by the Council. The remaining five percent of penalties, plus one-half of all interest earned on Trust Fund investments, will be divided equally between the final two components, a

National Oceanic and Atmospheric Administration RESTORE Act Science Program and a Department of the Treasury administered Centers of Excellence Research Grants Program.

## **II. These Procedures**

These procedures establish the Council's policy and procedures to ensure compliance with NEPA and Council on Environmental Quality (CEQ) regulations for implementing NEPA. Each Federal agency is required to develop NEPA procedures as a supplement to the CEQ regulations. The Council's major responsibilities are set out in greater detail in the RESTORE Act, and responsibilities relative to the administration of the Council-Selected Restoration Component are further described below. The Council continues to deliberate policies and procedures relative to implementation of the Spill Impact Component. Information on such matters will be available at a later date.

The below NEPA procedures are applicable to Council actions. Activities funded pursuant to any component of the Act may also be subject to an environmental review under NEPA in instances where there is a separate Federal action. For example, a restoration project funded under the Direct Component would be subject to NEPA if it required a permit to fill wetlands pursuant to Section 404 of the Clean Water Act.

### **Council-Selected Restoration Component**

The Act provides 30 percent of penalties deposited into the Trust Fund to the Council, plus one-half of the interest earned on Trust Fund investments, to carry out a Comprehensive Plan. In August 2013, the Council issued the Initial Comprehensive Plan for Restoring the Gulf Coast's ecosystem and economy. This Initial Comprehensive Plan provides a framework to

implement a coordinated region-wide restoration effort to restore, protect, and revitalize the Gulf Coast. The Initial Comprehensive Plan was accompanied by a Programmatic Environmental Assessment.

Pursuant to the Act, the Council will develop a “Funded Priority List” (or FPL) of projects and programs to be carried out to advance the goals and objectives set forth in the Initial Comprehensive Plan, subject to available funding. The Council will periodically update the Initial Comprehensive Plan and the FPL, in accordance with the Act.

The FPL and subsequent updates will consist of a list of projects and programs which the Council intends to fund for planning, technical assistance, or implementation purposes. The Council anticipates that once the full amount ultimately to be paid into the Trust Fund is known, future amendments to the FPL will include significantly larger projects and project lists that reflect the full amount available to be spent for restoration activities. A Council commitment to fund implementation of a project or program in the FPL is a Federal action which requires the appropriate level of NEPA review. Examples of NEPA compliance include preparation of new NEPA documentation, adoption of existing NEPA documentation, or application of a CE, as warranted. The FPL may commit planning and technical assistance funds for activities such as engineering, design, and environmental compliance for projects and programs. According to the Initial Comprehensive Plan, a Council commitment of planning or technical assistance funds for a project or program in an FPL does not necessarily guarantee that the Council will subsequently fund implementation of the project or program. Should the Council subsequently decide to fund implementation of the particular project or program, it will ensure the appropriate level of NEPA compliance prior to making its decision.

In developing and updating the FPL, the Council will seek to ensure that the projects and programs contained therein reflect a comprehensive approach for Gulf restoration, consistent with the Act and the Initial Comprehensive Plan. To that end, the Council will build upon existing restoration plans and strategies, engage the public, ensure the FPL is based on sound science, and assess the cumulative environmental impacts of projects and programs contained in the FPL, as appropriate.

There has been extensive Gulf coast restoration planning conducted at Federal, state, and local levels. This includes the Gulf Coast Ecosystem Restoration Task Force Strategy (Task Force Strategy), as well as state-level efforts, such as the Louisiana Comprehensive Master Plan for a Sustainable Coast and the Mississippi Coastal Improvement Program (MsCIP). In addition, watershed-level planning efforts have been conducted by Gulf-based National Estuary Programs and other stakeholder groups. The Council intends to build upon these planning efforts in developing the initial FPL and subsequent updates.

The Council will engage the public in the development of the FPL and subsequent updates. Public engagement conducted by the Council members prior to development of the draft FPL will be considered in the Council's project review and selection process. The public will also have an opportunity to review and comment on the draft FPL. Where applicable, the NEPA processes for specific projects and programs in the FPL will also provide opportunities for public input. The public would have the opportunity to provide input during the scoping of EISs as well as an opportunity to review and comment on draft EISs. Under some circumstances, as detailed in the NEPA procedures, the public would also have an opportunity to review and comment on draft EAs.

Independent scientific review of the projects and programs nominated for inclusion in the FPL will help ensure that all funded activities are based on the best available science. In some cases, projects and programs nominated for inclusion in the FPL may be derived from existing restoration plans, which have already undergone independent scientific review. In such cases, the Council's independent scientific review process would complement the scientific foundation established within the respective planning process.

The Council will ensure that the evaluations of projects and programs in the initial FPL and subsequent updates effectively assess potential cumulative impacts in accordance with NEPA, which requires a Federal agency to consider the incremental environmental impacts of the proposed action when combined with relevant past, present, and reasonably foreseeable future actions. The cumulative impact assessments will generally be tailored to the area of influence of the given activity. For example, a project with a large area of influence (such as a river diversion) would have a commensurately broader assessment of cumulative effects, while one with a limited area of influence (such as a small vegetative planting project) would have a more limited assessment of potential cumulative effects. To the extent appropriate, the assessment of cumulative impacts will draw upon existing information in relevant ongoing and completed NEPA documents, including the Initial Comprehensive Plan Programmatic EA, the *Deepwater Horizon* Natural Resources Damage Assessment Early Restoration Programmatic EIS, the Louisiana Coastal Area Ecosystem Restoration Plan Programmatic EIS, the MsCIP Programmatic EIS, and others. Among other potential benefits, effective cumulative impact assessments can help ensure that Council decisions regarding specific restoration projects are

informed with a broader understanding of the relationship between such projects and other restoration activities, whether supported by the RESTORE Act or another funding source.

### **III. Response to Public Comments and Other Changes to Procedures**

On January 16, 2015, the Council published draft NEPA procedures in the Federal Register for a 30-day public review and comment period (80 FR 2381). The Council received one comment letter, representing the combined comments of five organizations, on the draft NEPA procedures. The recommendations contained in that comment letter are summarized below, along with the Council's responses to the recommendations.

The commenter recommended the Council ensure that the alternatives analysis for projects and programs is robust and complete. The Council agrees that the analysis of alternatives is an essential component of the NEPA process. Consistent with CEQ regulations, the Council will ensure the rigor of the alternatives analysis for a project or program that requires evaluation in an EA or EIS is appropriate relative to the scope and magnitude of the activity being considered. As this is a policy-level recommendation, no change was made to the procedures in response to this comment.

The commenter recommended that the applicability and appropriateness of Council use of a member CE should be included in decision documents that are publically available. In response, the Council will inform the public when it uses a member CE in association with the approval of funding for a project or program under the Council-Selected Restoration Component. The Council will provide the public with the specific CE being used, along with the Council's findings regarding the review of potential extraordinary circumstances. Subsection 4(f) of the

procedures has been modified to clarify that such information will be made available to the public on the Council's website.

The commenter recommended that the Council provide a list of member agencies' potentially applicable CEs on the Council's website or provide links to the federal agency websites where those CEs can be found. In response, the Council will provide and endeavor to maintain links to member agencies' CEs on its website. It should be noted, however, that the potential applicability of a member CE to a Council action would be determined on a case-by-case basis. By providing links to the member agencies' CEs, the Council is not necessarily indicating its intent to use any of the subject CEs. That is a determination that would be made based on the specific details of the activity to which the CE might be applied. No change was made to the procedures in response to this comment.

The commenter recommended that the Council change the word "may" to "must" in Section 15(b). The Council will advise each recipient of Council-Selected Restoration Component funds of the recipient's obligations to address any and all environmental laws that might be applicable to implementation of a given project or program but that are not necessarily applicable to the Council's approval of funding for the activity. As discussed in the procedures, the Council will also endeavor to concurrently address all environmental requirements applicable to a proposed project or program, to the extent feasible and appropriate. However, there may be instances where it would be appropriate for the Council to issue a Record of Decision that approves funding for a project or program pending completion of all permits and approvals. For this reason, the Council has chosen to retain the discretion provided in the original language for this section.

The commenter recommended that the Council's NEPA procedures include a sunset provision (*e.g.*, five years) for the use of existing NEPA documents. The commenter also recommended that the Council develop specific criteria indicating environmental, ecological or other conditions that would trigger the development of a new EA or EIS. The Council agrees that a critical test when adopting or otherwise using a NEPA document that was not recently completed is determining whether the information contained therein is adequate and consistent with the requirements established in NEPA and the CEQ regulations. To that end, the procedures state that, in cases where the Council adopts a NEPA document, the supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects. The Council will apply this test to all NEPA documents it considers adopting. However, the Council will not set an expiration date on NEPA documents, as the age of a NEPA document does not necessarily dictate whether the information contained therein satisfies NEPA. Establishing an expiration date for NEPA documents might eliminate otherwise adequate NEPA documents from potential Council use. No change was made to the procedures in response to this comment.

The commenter recommended that the Council consider establishing an interagency co-located team for reviewing and preparing NEPA documents. The Council agrees that the use of interagency teams in the preparation and review of NEPA documents and other compliance information can result in greater efficiency and more robust information. Being comprised of a number of regulatory agencies, the Council is well-positioned to conduct such interagency work. Indeed, the Council has an interagency team that works on a range of issues pertaining to NEPA

and environmental compliance. Going forward, the Council intends to consider whether establishing a co-located interagency team would be an appropriate use of resources relative to the potential benefits it could provide. Such resource decisions are in large part contingent upon the ultimate amount of funding the Council will administer, a number that is not currently known. As this is a policy level recommendation, no change was made to the procedures in response to this comment.

The commenter recommended that the Council establish a system to share relevant information and data with Council members and applicants preparing NEPA documents. The commenter also recommended that the Council apply lessons learned from prior NEPA coordination and share best practices with applicants and document preparers. In response, the Council agrees that sharing relevant information, data, and lessons-learned with project sponsors and within the Council membership could help ensure efficient and effective NEPA processes. This is one of the roles of the interagency team referenced above. The Council will continue to conduct such activities, while also looking for other ways to effectively share information to improve environmental compliance outcomes. As this is a policy level recommendation, no change was made to the procedures in response to this comment.

In addition to the modification discussed above, the Council has also made the following minor changes to the procedures to increase clarity and consistency. In Section 9 paragraph (b)(7), the Council added language indicating that copies of final EISs will also be provided to Federal agencies and other parties who commented substantively on the draft EIS. This change ensures consistency with similar language provided in Section 12 paragraph (c)(12) of the procedures. Also, Section 4 paragraph (h) has been revised to omit a reference to functional

equivalence because it is not anticipated to be exercised with respect to the Council's activities. Finally, technical corrections were made to Section 4 paragraph (b), Section 5 paragraphs (b) and (c), and Section 13 paragraph (h)(8) to ensure consistency and compliance with NEPA, the CEQ Regulations, and a recent Executive Order.

#### **IV. Classification**

##### **Regulatory Planning and Review (Executive Orders 12866 and 13563)**

As an independent Federal entity that is composed of, in part, six Federal agencies, including the Departments of Agriculture, the Army, Commerce, and the Interior, the Department in which the Coast Guard is operating, and the Environmental Protection Agency, the requirements of Executive Orders 12866 and 13563 are inapplicable to these procedures.

##### **Regulatory Flexibility Act**

The Regulatory Flexibility Act requires the Council to consider whether a document would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. These NEPA procedures apply to Council actions and applicants for funding under the Council-Selected Restoration Component of the Act. These applicants are limited by the Act to the Federal and state members of the Council. Therefore, the Council hereby certifies that these procedures would not have a significant economic impact on a substantial number of small entities.

## **Paperwork Reduction Act**

Under the Paperwork Reduction Act, the Council must have approval from the Office of Management and Budget (OMB) before collecting information from the public (such as forms, general questionnaires, surveys, instructions, and other types of collections). According to these NEPA procedures, applicants for funding under the Council-Selected Restoration Component could be required to prepare and submit NEPA documentation to the Council prior to a decision on whether to fund a given activity. These applicants would be limited to the Federal and state members of the Council and NEPA submissions would be unique to each individual project or program selected for inclusion in the FPL. These procedures would not lead to the collection of information. On this basis, the Council has determined that these procedures would not create any new information collection requirements for the public.

## **Executive Order 13175: Consultation and Coordination with Indian Tribal Governments**

Executive Order 13175 requires the Council to engage in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications. "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. These NEPA procedures apply to the Council and its members, insofar as such members choose to apply for funding under the Council-Selected Restoration Component of the Act. Among other policies, these NEPA procedures establish Council policy

regarding coordination and consultation with tribal governments in NEPA processes conducted under the Council-Selected Restoration Component, where applicable. These NEPA procedures do not in any way alter the right of tribal governments to engage in NEPA processes conducted by the Council. These NEPA procedures are intended to foster effective communication with tribal governments in that regard. The Council has therefore determined that these NEPA procedures would not have tribal implications as the term is used pursuant to Executive Order 13175.

#### **Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898 directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and/or low-income populations. The Council's NEPA procedures specifically call for the consideration of potential environmental justice issues in the development of Environmental Impact Statements, and reference the need to address Executive Order 12898, where applicable. The Council has therefore determined that these NEPA procedures do not raise any environmental justice concerns.

#### **National Environmental Policy Act**

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis or document before establishing Agency procedures that supplement the CEQ

regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or document. *Sierra Club v. Bosworth*, 510 F.3d 1016, 1025-26 (9<sup>th</sup> Cir. 2007); *Heartwood, Inc. v. U.S. Forest Service*, 230 F.3d 947, 954-55 (7<sup>th</sup> Cir. 2000). Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3.

## **GULF COAST ECOSYSTEM RESTORATION COUNCIL'S PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS**

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## **Sec. 1. Purpose.**

This document establishes the Gulf Coast Ecosystem Restoration Council's (Council) policy and procedures (Procedures) to ensure compliance with the requirements set forth in the Council on Environmental Quality (CEQ) regulations 40 CFR parts 1500 through 1508 implementing the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4347. These Procedures also address compliance with other related statutes and directives. More specifically, these Procedures implement the CEQ NEPA regulations requirement that agencies adopt supplemental NEPA procedures.

## **Sec. 2. Authority.**

NEPA and its implementing regulations establish a broad national policy to protect and enhance the quality of the human environment, and develop programs and measures to meet national environmental goals. Section 101 of NEPA sets forth Federal policies and goals to encourage productive harmony between people and their environment. Section 102(2) provides specific direction to Federal agencies, described as “action-forcing” in the CEQ regulations, to further the goals of NEPA. These major provisions include requirements to use a systematic, interdisciplinary approach to planning and decision-making (section 102(2)(A)) and develop methods and procedures to ensure appropriate consideration of environmental values (section 102(2)(B)). Section 102(2)(C) requires preparation of a detailed statement for major Federal actions significantly affecting the quality of the human environment that analyzes the impact of and alternatives to the action.

*Policy.* It is the Council’s policy to:

- (a) Comply with NEPA and other environmental laws, regulations, policies, and Executive Orders applicable to Council actions;
- (b) Seek and develop partnerships and cooperative arrangements with other Federal, tribal, state, and local governments early in the NEPA process to help ensure efficient regulatory review of Council actions;

- (c) Ensure that applicable NEPA compliance and its documentation includes public involvement appropriate to the action being proposed and its potential impacts;
- (d) Interpret and administer Federal laws, regulations, Executive Orders, and policies in accordance with the policies set forth pursuant to NEPA, to the fullest extent possible;
- (e) Consider the potential environmental impacts of Council actions as early in the planning process as possible; and
- (f) Consult, coordinate with, and consider policies, procedures, and activities of other Federal agencies, as well as tribal, state, and local governments.

*Applicability.* These Procedures are intended to supplement CEQ's NEPA regulations, which also apply to proposed actions by the Council and are incorporated herein by reference.

Depending on the nature of the proposed action and its potential impacts on the human environment, Council actions may be categorically excluded (CE) from additional NEPA review by the Council, or require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). An EA results in a Finding of No Significant Impact (FONSI) or a decision to prepare an EIS. The Council need not prepare an EA prior to an EIS; rather, if the Council believes the proposed action may significantly affect the quality of the

human environment, it may proceed directly to preparation of an EIS. An applicant for funding may assist the Council, either by preparing the appropriate level of environmental analysis or hiring an environmental consultant to do so, as appropriate, for proposed actions. These Procedures will apply to the fullest extent practicable to proposed Council actions and environmental documents begun but not completed before these Procedures take effect. They do not apply, however, to decisions made and draft or final environmental documents completed prior to the date on which these Procedures take effect.

### **Sec. 3. Definitions and Acronyms.**

The definitions contained within CEQ's regulation at 40 CFR part 1508 apply to these Procedures. Additional and expanded definitions and acronyms are as follows:

- (a) "Council" means the Gulf Coast Ecosystem Restoration Council.
- (b) "Council Action" is an action taken by the Council potentially subject to NEPA. Council Actions may be wholly or partially funded by the Council. Council Actions include but are not limited to awarding grants, contracts, purchases, leases, construction, research activities, rulemakings, and amendment or revision of a Comprehensive Plan.
- (c) "CE" means Categorical Exclusion.
- (d) "CEQ" means the Council on Environmental Quality.
- (e) "EA" means an Environmental Assessment.
- (f) "EIS" means an Environmental Impact Statement.

- (g) “EPA” means the U.S. Environmental Protection Agency.
- (h) “Executive Director” means the Executive Director of the Gulf Coast Ecosystem Restoration Council.
- (i) “FONSI” means a Finding of No Significant Impact.
- (j) “NEPA Documents” are any of the following:
- (1) Documentation associated with use of a CE;
  - (2) Environmental Assessment;
  - (3) Finding of No Significant Impact;
  - (4) Notice of Intent (NOI) to Prepare an EIS;
  - (5) Draft, Final, or Supplemental Environmental Impact Statement;
  - (6) Record of Decision; and
  - (7) NOI to Adopt an EA or EIS.
- (k) “Project Sponsor” or “Applicant” is the entity that seeks Council Action to fund a project or program.
- (l) “Record of Decision” or “ROD”, in cases requiring an EIS, is the decision and public document based on the EIS (*see* 40 CFR 1505.2).
- (m) “Responsible Official” is the person delegated authority by the Council to make recommendations to the Council (or the Council’s designated decision-maker) regarding

compliance with NEPA and in some cases to implement decisions pertaining to NEPA (as described in these Procedures or in the Council's Standard Operating Procedures).

#### **Sec. 4. Actions Covered.**

(a) *General Rule.* The requirements of sections 5 through 15 of these Procedures apply to Council Actions that are determined to be Federal actions in accordance with this section.

(b) *Federal Actions.* For purposes of these Procedures, a Federal action is any Council Action that is potentially subject to the Federal control and responsibility of the Council. As described in the CEQ regulations, the term "major" does not have a meaning independent of the term "significantly" (*see* 40 CFR 1508.18).

(c) *Actions Categorically Excluded.* The Council has determined that certain categories of actions are eligible to use a CE for compliance with NEPA, as they do not have a significant impact individually or cumulatively on the quality of the human environment. A proposal is categorically excluded if the Council determines the following:

- (1) The proposed action fits within a class of actions that is listed below;
- (2) There are no extraordinary circumstances indicating the action may have a significant effect (*see* subsection (e) below); and
- (3) The proposal has not been segmented to meet the definition of a CE.

(d) The following categories of Council Actions are categorically excluded from further NEPA review in an EA or EIS:

(1) *Administrative and Routine Office Activities:*

- i. Administrative procurements (*e.g.*, for general supplies) and contracts for personnel services.
- ii. Routine fiscal and administrative activities involving personnel (*e.g.*, recruiting, hiring, detailing, processing, paying, supervising, and recordkeeping).
- iii. Routine procurement of goods and services to support operations and infrastructure, including routine utility services and contracts, conducted in accordance with applicable procurement regulations, Executive Orders, and policies.
- iv. Routine administrative office functions (*e.g.*, recordkeeping; inspecting, examining, and auditing papers, books, and records; processing

correspondence; developing and approving budgets; responding to requests for information).

- v. Routine activities and operations conducted in an existing structure that are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharge to the environment, will not result in substantially different waste discharges from current or previous activities, and will not result in emissions that exceed established permit limits, if any.
- vi. Council meetings, hearings, site visits, technical assistance, public affairs activities, and/or training in classrooms, meeting rooms, other facilities, or via the Internet.

(2) *Regulation, Monitoring, and Oversight of RESTORE Act Activities:*

- i. Promulgation or publication of regulations, procedures, manuals, and guidance documents that are of an administrative, financial, legal, technical, or procedural nature.

ii. Internal orders and procedures that need not be published in the Federal Register under the Administrative Procedure Act, 5 U.S.C. 552.

iii. Preparation of studies, reports, or investigations that do not propose a policy, plan, program, or action.

(3) *Council Activities for Planning, Research or Design Activities (Documentation Required):*

i. Funding or procurements for activities which do not involve or lead directly to ground-disturbing activities which may have significant effects individually or cumulatively, and do not commit the Council or its applicants to a particular course of action affecting the environment, such as grants to prepare environmental documents, planning, technical assistance, engineering and design activities, or certain research. Use of this CE will be documented following the procedures described in subsection 4(f).

(4) *Council Funded Activities that Fall Under a CE of a Federal Council Member*  
(Documentation Required):

- i. Any environmental restoration, conservation, or protection activity that falls within a CE established by a Federal agency Council member, provided no extraordinary circumstances preclude the use of the CE and the Federal agency that established the CE is involved in the Council action. A Federal agency Council member is involved in the Council action when that Federal agency advises the Council that use of the CE would be appropriate for the specific action under consideration by the Council. Use of this CE will be documented following the procedures described in subsection 4(f).

(e) *Extraordinary Circumstances.* Some Council Actions that would normally be categorically excluded from further NEPA review in an EA or EIS may not qualify for a CE because extraordinary circumstances exist (*see* 40 CFR 1508.4). The Responsible Official, in cooperation with the applicant as appropriate, will conduct a review to determine if there are extraordinary circumstances. Such extraordinary circumstances are:

- (1) A reasonable likelihood of substantial controversy regarding the potential environmental impacts of the proposed action.
- (2) Tribal concerns with actions that impact tribal lands or resources.

- (3) A reasonable likelihood of adversely affecting environmentally sensitive resources.
- Environmentally sensitive resources include but are not limited to:
- i. Species that are federally listed or proposed for listing as threatened or endangered, or their proposed or designated critical habitats; and
  - ii. Properties listed or eligible for listing on the National Register of Historic Places.
- (4) A reasonable likelihood of impacts that are highly uncertain or involve unknown risks or if there is a substantial scientific controversy over the effects.
- (5) A reasonable likelihood of air pollution at levels of concern or otherwise requiring a formal conformity determination under the Clean Air Act.
- (6) A reasonable likelihood of a disproportionately high and adverse effect on low income or minority populations (*see* Executive Order 12898).
- (7) A reasonable likelihood of contributing to the introduction or spread of noxious weeds or non-native invasive species or actions that may promote the introduction, or spread of such species (*see* Federal Noxious Weed Control Act and Executive Order 13112).
- (8) A reasonable likelihood of a release of petroleum, oils, or lubricants (except from a properly functioning engine or vehicle) or reportable releases of hazardous or toxic substances as specified in 40 CFR part 302 (Designation, Reportable Quantities,

and Notification); or where the proposed action results in the requirement to develop or amend a Spill Prevention, Control, or Countermeasures Plan in accordance with the Oil Pollution Prevention regulation.

The mere existence of any of the circumstances described above will not necessarily trigger preparation of an EA or EIS. The determination that an extraordinary circumstance exists and an EA or EIS is needed will be based on the potential significance of the proposed action's effects on the environment. If it is not clear whether a CE is appropriate, the Responsible Official, after consulting with the Council, may require preparation of an EA.

(f) *Documented Categorical Exclusion.* The purpose of CEs is to reduce paperwork and streamline the project implementation process. The NEPA does not require the Council to document actions that qualify for a CE and do not involve extraordinary circumstances (*see* 40 CFR 1500.4(p)). When the Responsible Official chooses to document use of a CE in addition to those identified in subsection 4(d)(3) and 4(d)(4), the documentation should include:

- (1) A description of the proposed action.
- (2) The CE relied upon, including the information or process used to determine that no extraordinary circumstances are present.
- (3) A determination by the Responsible Official that the CE applies.

The Council will post documented CEs on its website. The Council, however, generally will not publicly post documentation supporting a CE for activities occurring on:

(1) Private lands; or

(2) Other lands under consideration by the Council for a project if the release of such information could lead to impacts to sensitive lands.

(g) *Emergency Actions/Alternate Arrangements:* In the event of an emergency situation, the Council may need to take an action to prevent or reduce the risk to the environment or public health or safety that may affect the quality of human environment without having the time to evaluate those impacts under NEPA. In some cases, the emergency action may be covered by an existing NEPA analysis or a CE, while in other cases, it may not.

(1) In cases where the Responsible Official, in consultation with the Council, determines that an EIS is appropriate, the Council will consult with CEQ about alternative arrangements for complying with NEPA in accordance with 40 CFR 1506.11.

(2) In cases where the Responsible Official determines that an environmental assessment is appropriate, the Responsible Official shall consult with the Council to establish alternative arrangements for the environmental assessment. Any such alternative arrangement for an EA must be documented and a copy provided to CEQ.

(h) *Actions Exempt from the Requirements of NEPA.* Certain Council Actions may be covered by a statutory exemption under existing law. The Council will document its use of such an exemption pursuant to applicable requirements.

## **Sec. 5. Timing.**

(a) *General.* The potential environmental effects of a proposed Council Action will be considered at the earliest practicable time along with appropriate scientific, technical, and economic studies. Coordination with appropriate federal, state, tribal, and local authorities and, to the extent appropriate and described in these Procedures, the public meetings, should begin at the earliest practicable time. As a general matter, the project planning process should include all environmental permit evaluation and review requirements, including applicable timeframes when possible, so that applicants for funding can collect necessary information and provide it to the agency with jurisdiction or special expertise in a timely manner. Applicants or consultants should complete these tasks at the earliest possible time during project planning to ensure full consideration of all environmental resources and facilitate the Council's NEPA process.

(b) *Applications for Funding.* The Applicant may be responsible for preparation of the appropriate level of proposed NEPA analysis for the Council. An EA, EIS, or CE determination, as appropriate, will be completed prior to the final decision by the Council to fund a proposed project or program and should accompany the application for funding the proposed project through the decision-making process.

(c) *Council Initiated Actions.* The appropriate NEPA review will be completed prior to a decision by the Council to implement an action that would have impacts on the environment and should accompany the proposal through the decision-making process.

## **Sec. 6. Coordinating NEPA on Joint Actions.**

Interagency coordination and collaboration can help ensure efficient and effective NEPA processes. To that end, the Council will serve as a Joint Lead, Lead Agency, or Cooperating Agency as appropriate for the preparation of NEPA documents relevant to its activities.

Subsections (a) through (c) below describe the circumstances in which the Council may serve as Joint Lead, Lead Agency, or Cooperating Agency, along with the general roles and responsibilities associated with each. In general, the Council will either be the Lead or Joint Lead Agency on all Council-initiated actions subject to NEPA.

(a) *Joint Actions.* Where one or more Federal agencies, together with the Council propose or are involved in the same action; are involved in a group of actions directly related because of functional interdependence or geographical proximity; or are involved in a single program, the Responsible Official for the Council should seek to join all such agencies in performing a joint NEPA analysis and, where appropriate, other necessary environmental documentation.

(b) *Lead Agency.*

- (1) The Council will follow CEQ's regulation regarding designation of a Lead Agency when multiple Federal agencies are involved (40 CFR 1501.5). The Lead Agency should consult with the other participating agencies to ensure that the joint action

makes the best use of the participating agencies' areas of jurisdiction and special expertise, that the views of participating agencies are considered in the course of the NEPA process, and that the compliance requirements of all participating agencies are met.

- (2) When another Federal agency is the Lead Agency, the Council may act as either a Co-Lead Agency or a Cooperating Agency (as detailed in subsection (c) below), as appropriate.

(c) *Cooperating Agency.* When another Federal agency is a Lead Agency for the preparation of a NEPA review (*i.e.*, CE, EA, EIS) for a proposed activity, the Council may be a Cooperating Agency. When the Council is a Cooperating Agency on a joint action, the Responsible Official will perform the functions stated in 40 CFR 1501.6(b) and review the work of the Lead Agency to ensure that its work product will satisfy the requirements of the Council under these Procedures. After acting as a Cooperating Agency, the Council may adopt the NEPA document prepared by the Lead Agency, consistent with 40 CFR 1506.3. The Council will comply with the review and approval responsibilities contained in these Procedures prior to signing any final NEPA decision document.

## **Sec. 7. Applicants for Funding.**

(a) *General.* The Council may require an applicant for funding to prepare the requisite draft NEPA analysis of the proposed project and to submit that analysis with the application. The

Council may also require an applicant to prepare and submit environmental information in the form of a proposed EIS, proposed EA, or proposed documentation supporting the application of a CE. This could include, for example, a proposed draft EIS, proposed draft EA, proposed final EIS, or proposed final EA, pending Council adoption/approval. Documentation supporting application of a CE will normally be limited to a description of the proposed activity, the CE relied upon, and the information or process used to determine there are no extraordinary circumstances. The Council may require the applicant to act as a Joint Lead Agency, depending on whether the applicant is a Federal agency. Where appropriate, the Council will cooperate with state and local agencies to conduct joint processes, including joint environmental assessments and joint environmental impact statements, provided such cooperation is fully consistent with 40 CFR 1506.2.

*(b) Information Required.* When an applicant is required to submit environmental documentation for a proposed project or program, the Responsible Official, where appropriate, will specify the types and extent of information required, consistent with the CEQ regulations, these Procedures and any other applicable laws, regulations, Executive Orders, or policies. The Responsible Official will work with applicants early in the process, as appropriate, to assist in the development of information responsive to sections 10 through 13 of these Procedures. The project planning process should include all environmental permitting and review requirements, including applicable timeframes when possible, so that applicants for funding can collect necessary information and provide it to the agency with jurisdiction or special expertise in a timely manner.

(c) *Limits on Actions by the Applicant.* The Responsible Official will inform an applicant that the applicant may not take any action within the Council's jurisdiction that would have an adverse environmental impact or limit the choice of reasonable alternatives, prior to completion of the environmental review process by the Council (*see* 40 CFR 1506.1).

(d) *Council Responsibility.* The Council is responsible for its own compliance with Federal environmental laws, regulations, Executive Orders, and policies. As appropriate, the Responsible Official will solicit comments from interested parties on the environmental consequences of any application.

The Responsible Official will independently evaluate and prepare a recommendation to the Council regarding whether an applicant's environmental documentation satisfies the requirements of the CEQ regulations and these Procedures. In conducting this review, the Responsible Official will seek the advice of the Council Members and/or subject matter experts, as appropriate. Upon approval by the Council, the documentation will be considered to have been prepared by the Council for purposes of sections 9 through 15 of these Procedures.

## **Sec. 8. Consultants.**

(a) *General.* The Council or applicants to the Council for funding may use consultants in the performance of NEPA analysis and the preparation of other environmental documents. The Responsible Official must approve the use of a selected consultant before the consultant begins performing analyses or preparing environmental documents related to Council-funded proposals. The Responsible Official will review any analysis performed and any documents prepared by a consultant to ensure that they satisfy the requirements of these Procedures.

(b) *Conflicts of Interest (40 CFR 1506.5(c))*. The Responsible Official will exercise care in selecting consultants and reviewing their work to ensure that their analysis is complete and objective. Consultants will execute a disclosure statement prepared by the Responsible Official, certifying that they have no financial or other interest in the outcome of the project.

(c) *Council Responsibility (40 CFR 1506.5)*. The Council is responsible for its own compliance with Federal environmental laws, regulations, policies and Executive Orders, and cannot delegate this responsibility to consultants. The Responsible Official will independently evaluate any analysis performed and any documents prepared by a consultant to ensure that they satisfy the requirements of these Procedures. The Responsible Official will seek the advice of subject matter experts and/or Council members, as appropriate.

## **Sec. 9. Public and Tribal Involvement for Environmental Impact Statements.**

(a) *Policy*. Public involvement is encouraged in the environmental analysis and review of a proposed Council Action.

(b) *Procedures*. After determining that a draft EIS should be prepared, the Lead or Co-Lead agency will implement the following procedures, at a minimum, to engage affected members of the public and solicit public input:

- (1) Develop a list of interested parties, including Federal, regional, state, and local authorities, tribes, environmental groups, individuals, businesses, and community organizations, as applicable.

- (2) Publish an NOI in the Federal Register, and initiate scoping in accordance with 40 CFR 1501.7 and 1508.22, and notify directly those officials, agencies, organizations, tribes and individuals with particular interest in the proposal. The Council shall engage in Nation-to-Nation consultation, as required.
- (3) Hold public scoping meetings as appropriate to the action.
- (4) Circulate the draft EIS for comment to interested parties.
- (5) Publicize the availability of the draft EIS by press release, advertisement in local newspapers of general circulation, or other suitable means such as posting the draft EIS on the Council's website. As appropriate, the Council will also circulate the draft EIS and supporting documents to public depositories, such as libraries. The EPA will publish a notice of availability in the Federal Register which will determine the appropriate duration of the public review and comment period.
- (6) If necessary or desirable, using the criteria in 40 CFR 1506.6(c), hold a public meeting or public hearing on the draft EIS. If a public hearing is held, the draft EIS should be made available at least 15 days prior to the hearing.

- (7) Consider and respond to all substantive comments in the final EIS and provide copies of the final EIS to all who request a copy, and to Federal agencies and other parties who commented substantively on the draft EIS.

(c) *List of Contacts.* Interested persons may obtain information on the Council's environmental process and on the status of EIS's issued by the Council from the Responsible Official. The Council will provide contact information on the Council's website and in other public notices.

#### **Sec. 10. Environmental Assessment.**

(a) *Policy.* The Responsible Official should perform, participate in, or coordinate, as appropriate, the process of considering the environmental impacts of a proposed Council Action at the earliest practical time in the planning process. To the fullest extent possible, steps to comply with all environmental laws, regulations, policies and Executive Orders, as well as the requirements of the RESTORE Act, will be undertaken concurrently.

(b) *Scope.* An EA should contain a brief discussion of the proposed action; the purpose and need for the proposed action; an appropriate range of reasonable alternatives to the proposed action, including a no action alternative; an evaluation of the environmental impacts of the proposed action and any identified alternatives; a list of the agencies and persons consulted; a list of alternatives eliminated from further analysis with an explanation of why they were eliminated; a list of all applicable Federal environmental laws and requirements; and mitigation measures needed to reduce environmental impacts to below the level of significance (if applicable). The

scope of environmental impacts considered in the EA should include both beneficial and adverse impacts; direct, indirect, and cumulative impacts; impacts of both long- and short-term duration; as well as analysis of the effects of any appropriate mitigation measures or best management practices that are considered. The mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

The level of detail and depth of impact analysis should be limited to documenting the potential impacts of the proposed action and whether the proposed action would result in any significant adverse environmental impacts. The EA should contain objective analyses to support its environmental impact conclusions.

*(c) Using Existing Environmental Analyses Prepared Pursuant to NEPA and the CEQ Regulations.*

- (1) When available, the Responsible Official, or applicant if applicable, should use existing NEPA analyses for assessing the impacts of a proposed action and reasonable alternatives. Procedures for adoption or incorporation by reference of such analyses must be followed where applicable.
- (2) If existing NEPA analyses include data and assumptions appropriate for the analysis at hand, the Responsible Official, or applicant if applicable, should use these existing NEPA analyses and/or their underlying data and assumptions where feasible.

- (3) An existing environmental analysis prepared pursuant to NEPA and the CEQ regulations may be used in its entirety if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.
- (4) The Responsible Official, or applicant if applicable, should make the best use of existing NEPA documents by supplementing, tiering to, incorporating by reference, or adopting previous environmental analyses to avoid redundancy and unnecessary paperwork.

*(d) Public Coordination on the EA/FONSI.*

- (1) Normally a draft FONSI need not be coordinated in advance outside the Council prior to its issuance. Copies of approved FONSIIs will be available to the public, government agencies, or Congress upon request at any time.
- (2) The Council will post final EAs and approved FONSIIs on its website.

- (3) To the extent appropriate and practicable, the Council may provide the public with an opportunity to review and comment on draft EAs. When the proposed action is, or is closely similar to, one which normally requires an EIS as identified in Section 12 of these Procedures, or when the nature of the proposed action is one without precedent, the Council will make a draft EA available to the public for review for a period of not less than 30 days before the final determination is made by the Council. The Council will consider any and all comments received prior to making a final decision regarding the associated FONSI.

(e) *Level of Analysis.* The EA process should assess each impact identified as relevant to the proposed action or alternatives. The level of analysis of each impact should be guided by the following factors:

- (1) The likelihood of the potential effects;
- (2) The magnitude of the potential effects; and
- (3) Whether any adverse effects on the environment may be significant, even if on balance the proposed project may be beneficial.

(f) *Determination Based on the EA.* On the basis of the EA, the Responsible Official will determine whether the proposed action has a potentially significant impact on the human

environment and will make a recommendation to the Council as to whether an EIS is needed. Based on the Council's decision, the Responsible Official will take action in accordance with subsection (1) through (3) below, as applicable:

- (1) If the Council decides that the proposed action will not have a significant impact on the human environment, the Responsible Official will prepare a draft FONSI in accordance with Section 11 of these Procedures.
- (2) If the Council decides that the proposed action has a potentially significant impact, the Responsible Official will prepare an NOI to prepare an EIS, and begin the scoping process (40 CFR 1501.7).
- (3) If the proposed action will occur in a wetland or in a 100-year floodplain, the Council will ensure an opportunity for public comment on a draft of the EA. If such a situation is present, the EA also will follow Section 13(h)(6) or (8) of these Procedures, as applicable.

#### **Sec. 11. Finding of No Significant Impact.**

(a) *General.* A FONSI, as determined in accordance with Section 10 of these Procedures, is prepared for all Council Actions for which an EIS is not required and a CE does not apply.

(b) *Decision-making on the Proposed Action.* The Council may not commit itself or its resources to an action requiring an EA (but not an EIS) until a FONSI has been approved in accordance with this Section.

(c) *Staff Responsibilities.*

(1) When required, the Responsible Official will prepare a draft FONSI, which will include the EA, or a summary of it, and note any other related environmental documents.

(2) After complying with subsection (c)(1) of this Section, the Responsible Official will present the finding to the Council, which will approve the FONSI or decide an EIS will be prepared. The Council will authorize the Executive Director to sign FONSI on behalf of the Council.

(d) *Representations of Mitigation.* There may be situations in which the Council relies on the implementation of certain measures to mitigate the significance of the proposed action's environmental impacts and bases its FONSI on the implementation of such measures. Under such situations, the Council will ensure that the mitigation measures are implemented. Where applicable, the Council will work with the applicant to include appropriate mitigation measures as a grant condition or as a contract provision. *See*, CEQ's Memorandum, "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact."

(e) *Changes and Supplements.* If, prior to taking a final Council Action for which a FONSI was prepared, a significant change is made that would alter environmental impacts, or if significant new information becomes available regarding the environmental impacts, the Responsible Official, or applicant if applicable, will reevaluate the EA to determine whether supplementation is necessary. If the EA is not sufficient, the Responsible Official, or applicant if applicable, will supplement the existing EA or prepare a new EA to determine whether the changes or new information indicate the action may have a significant impact. If, because of the change or new information, the proposed action may have a significant impact, the Responsible Official, after consulting with the Council, will issue an NOI to prepare an EIS and begin the scoping process.

(f) *Contents of a FONSI (40 CFR 1508.13).* A FONSI may include the EA or it may incorporate the EA by reference, in accordance with CEQ's regulations. The FONSI may be combined with a Council decision-making document or it may be limited to determining that an EIS is not required. A FONSI should contain at least the following:

- (1) Identification of the document as a FONSI;
- (2) Identification of the Council;
- (3) The title of the action;

- (4) The preparer(s) of the document (*i.e.*, a list of those persons or organizations assisting in the preparation of the document);
- (5) The month and year of preparation of the document;
- (6) The name, title, address, and phone number of the person in the Council who should be contacted to supply further information about the document;
- (7) A brief description of the proposed action;
- (8) A brief description of, or reference to the page/section in the EA that discusses, the alternatives considered;
- (9) A brief discussion of, or reference to the page/section in the EA that discusses, the environmental effects of the proposed action;

- (10) Documentation of compliance with Sections 13(h)(6) and (8) of these Procedures, if the proposed action will occur in a wetland or in a 100-year floodplain;
- (11) Reference to the page/section in the EA that provides the list of all Federal permits, licenses, and any other approvals or consultations which must be obtained in order to proceed with the proposal;
- (12) A discussion of mitigation measures and environmental commitments that will be implemented, if applicable;
- (13) A conclusion that the preferred alternative, and where appropriate any other reasonable alternative(s), has no potentially significant impact; and
- (14) The Executive Director's signature indicating the approval of the Council as detailed in subsection (c) of this Section.

## **Sec. 12. Environmental Impact Statement.**

(a) *General.* The Council will prepare an EIS for Council Actions with potentially significantly impacts, as determined in accordance with Section 10 of these Procedures.

(b) *Decision-making on the Proposed Action.* The Council may seek a waiver from the EPA of the time limit requirements of 40 CFR 1506.10 for compelling reasons of national policy.

(c) *Staff Responsibilities and Timing.*

- (1) The Council, or applicant if applicable, should begin the process for preparation of an EIS as soon as it determines, or the EA performed in accordance with Section 10 of these Procedures discloses, that the proposed action has potentially significantly environmental impacts.
- (2) If the Council is the Lead Agency or Joint Lead, the Responsible Official will issue an NOI and undertake the scoping process identified in 40 CFR 1501.7 as soon as the Council decides to prepare an EIS.
- (3) In preparing a draft EIS, the Responsible Official, or applicant if applicable, will consider any scoping comments, develop the relevant analysis, and engage in applicable coordination in accordance with CEQ's regulations and Section 13 of these Procedures.
- (4) The Responsible Official will submit the proposed draft EIS to the Council.

- (5) A draft EIS may be formally released outside the Council only after approval by the Council.
- (6) The Responsible Official will direct electronic distribution of the draft EIS as follows: EPA; all interested Council regional and state offices; all Federal agencies that have jurisdiction by law or special expertise with respect to the environmental impacts of the proposed action; tribal, state, and local government authorities; to the extent practicable and appropriate, public libraries in the area to be affected by the proposed action; and all other interested parties identified during the preparation of the draft EIS that have requested a copy. Hard copies will be made available upon request. Public notice will be designed to reach potentially interested or affected individuals, governments, and organizations. In addition, the draft EIS will be made available on the Council's website concurrently with the public comment period.
- (7) The draft EIS will be made available for public and agency comment for at least 45 days from the date when EPA publishes its Notice of Availability (NOA) in the Federal Register. The time period for comments on the draft EIS will be specified

in a prominent place in the NOA and on the coversheet of the draft EIS. Public comments must be provided to the person designated in the public notice.

- (8) Where a public hearing is to be held on the draft EIS, as determined in accordance with Section 9(b)(6) of these Procedures, the draft EIS will be made available to the public at least 15 days prior to the hearing (*see* 40 CFR 1506.6).
- (9) The Responsible Official will consider substantive comments received on the draft EIS. If a final EIS is not submitted to the Council for approval within three years from the date of the draft EIS circulation, the Responsible Official or applicant, as appropriate, will prepare a written reevaluation of the draft to determine whether the draft EIS warrants supplementation due to changed circumstances or new information. If so, a supplement to the draft EIS or a new draft EIS will be prepared and circulated as required by subsections (1) through (9) of this subsection. If the draft EIS does not warrant supplementation, the Responsible Official will prepare the final EIS.
- (10) The Responsible Official will submit the final EIS and draft ROD to the Council for a decision (*see* Section 15 of these Procedures).

- (11) The ROD will become final upon signature of the Executive Director. The Council will delegate authority for signature of RODs to the Executive Director, provided such RODs are first approved by the Council.
- (12) The Responsible Official will direct electronic distribution of the final EIS and ROD as follows: EPA; all interested Council regional and state offices; state, tribal, and local authorities; to the extent practicable, public libraries in the area affected by the proposed action; Federal agencies and other parties who commented substantively on the draft EIS; and all agencies, organizations, or individuals that have requested a copy. Hard copies will be provided upon request. The final EIS and ROD will be posted on the Council's website and notice will go out to interested parties who have asked to receive notice.
- (13) If major steps toward implementation of the proposed action have not commenced, or a major decision point for actions implemented in stages has not occurred, within three years from the date of publication of the final EIS, the Responsible Official will prepare a written evaluation of whether the final EIS warrants supplementation. The Responsible Official will submit this evaluation to the Council.

(d) *Changes and Supplements.* Where a draft or final EIS has been prepared for a proposed Council Action, and substantial changes to the proposal are made or significant new circumstances or information comes to light that is relevant to environmental concerns and bears on the proposed action or its impacts, the Responsible Official, or applicant if appropriate, will prepare a supplement to the original draft or final EIS. Such a supplement will be processed in accordance with subsections (3) through (13) of subsection (c) of this Section. The Responsible Official will determine whether, and to what extent, any portion of the proposed action is unaffected by the planning change or new information. Where appropriate, Council decision-making on portions of the proposed action having utility independent of the affected portion may go forward regardless of the concurrent processing of the supplement, so long as the EIS and ROD are completed for those actions having independent utility and the NOI for the supplemental NEPA analysis and documentation articulates the basis for determining independent utility.

(e) *Representations of Mitigation.* Where a final EIS has represented that certain measures will be taken to mitigate the adverse environmental impacts of an action, the Council will include the mitigation measures, and any appropriate monitoring wherever appropriate, as a condition of funding or, where appropriate, contract provisions. If necessary, the Council may take steps to enforce implementation of such mitigation measures.

(f) *Contents of an EIS.* The contents of both a draft and final EIS are detailed in the CEQ regulations and Section 13 of these Procedures. Recognizing that CEQ regulations allow the combination of NEPA documents with other agency documents and that the Council may find it practical to do so, format and page limitations on EIS's should follow those set out in 40 CFR

1502.7 and 1502.10, to the extent practicable. An EIS should avoid extraneous data and discussion. The text of an EIS should be written in plain language, comprehensible to a lay person. Technical materials should be placed into appendices, produced as stand-alone reports available on the Council's website, or made available in hard copy by request. Graphics and drawings, maps, and photographs may be used as necessary to clarify the proposal and its alternatives. The sources of all data used in an EIS will be noted or referenced in the EIS.

Previous NEPA analyses should be used, where available, to ensure efficient preparation of an EIS. As appropriate, previous NEPA analyses can be tiered to, incorporated by reference, or may be adopted into the document consistent with CEQ's regulations and the process detailed above in subsection 10(c). *See* 40 CFR 1502.20, 1502.21, and 1508.28.

### **Sec. 13. Contents of an Environmental Impact Statement.**

To the fullest extent possible, the Responsible Official, Lead Agency, or applicant, will concurrently draft the EIS while seeking compliance with other applicable environmental requirements.

In addition to the requirements of 40 CFR 1502.10 through 1502.18, and subject to the general provisions of Section 12 of these Procedures, an EIS should contain the following:

- (a) Identification of the Council.
- (b) The Responsible Official who prepared or oversaw preparation of the document
- (c) The month and year the document was prepared.

(d) In a draft EIS, the name, title, and address of the person in the Council to whom comments on the document should be addressed, and the date by which comments must be received to be considered. Typically this will be the Responsible Official.

(e) A list of those persons, organizations, or agencies assisting the Council in the preparation of the document.

(f) In a final EIS, a list of all agencies, organizations, or persons from whom comments were received on the draft EIS.

(g) A short, introductory description of the environment likely to be affected by the proposed action, including a list of all states, counties, and local areas likely to be affected.

(h) Consistent with the description provided in 40 CFR 1502.16, an analysis of the environmental consequences of the proposed action. The following areas should be considered in the environmental analysis, although their discussion – and the extent of that discussion – in the EIS is dependent on their relevance:

- (1) Air quality. There should be an assessment of the consistency of the proposal and alternatives with Federal and state plans for the attainment and maintenance of air quality standards.

- (2) Water quality. There should be an assessment of the consistency of the alternatives with Federal and state standards concerning drinking water, storm sewer drainage,

sedimentation control, and non-point source discharges such as runoff from construction operations. The need for any permits under sections 402 and 404 of the Clean Water Act (33 U.S.C. 1342 and 1344) and Section 10 of the Rivers and Harbors Act should also be assessed.

- (3) Noise. The alternatives should be assessed with respect to applicable Federal, state, and local noise standards.
- (4) Solid waste disposal. The alternatives should be assessed with respect to state and local standards for sanitary landfill and solid waste disposal.
- (5) Natural ecological systems. The EIS should assess both short-term (*e.g.*, construction period) and long-term impacts of the alternatives on wildlife, vegetation, and ecological processes in the affected environment.
- (6) Wetlands. In accordance with Executive Order 11990, the EIS should determine whether any of the alternatives will be located in a wetland area. If the proposed action is located in a wetland area, the final EIS should document a determination by the Responsible Official that there is no practicable alternative to such location,

and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

(7) Protected species. If applicable, the EIS will discuss the impacts of the alternatives on species that are listed or proposed for listing as threatened or endangered under the Endangered Species Act, or the proposed or designated critical habitats for such species; protected species under the Marine Mammal Protection Act; and birds protected under the Migratory Bird Treaty Act. In such cases, the EIS should discuss any consultation or coordination, as appropriate, with the appropriate Federal agency.

(8) Flood hazard evaluation and floodplain management. Under E.O. 11988, as amended by E.O. 13690, Federal agencies proposing activities in a 100-year floodplain are directed to consider alternatives to avoid adverse effects and incompatible development in the floodplain. If no practicable alternatives exist to siting an action in the floodplain, the EIS should discuss how the action will be designed to minimize potential harm to or within the floodplain.

(9) Coastal zone management. If applicable, the EIS should discuss to what extent the alternatives are consistent with approved coastal zone management programs in

affected states, as required by section 307(c)(2) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(2).

(10) Essential Fish Habitat (EFH). If applicable, the EIS will identify any EFH that could be impacted by the alternatives. Actions that could have the potential to affect EFH require consultation with the National Oceanic and Atmospheric Administration under the Magnuson-Stevens Act to evaluate potential impacts to designated EFH and minimize these impacts. The final EIS should document these consultations.

(11) Use of natural resources other than energy, such as water, minerals, or timber.

(12) Aesthetic environment and scenic resources. The EIS should identify any significant aesthetic changes likely to occur in the natural landscape and in the developed environment.

(13) Land use. The EIS should assess the impacts of each alternative on local land use controls and comprehensive regional planning, as well as on development within

the affected environment, including, where applicable, other proposed federal actions in the area.

- (14) Socioeconomic environment. The EIS should assess the number and kinds of available jobs likely to be affected by the alternatives. For each alternative considered, the EIS should also discuss the potential for community disruption or cohesion, the possibility of demographic shifts, and impacts on local government services and revenues.
- (15) Public health and public safety. The EIS should assess potential environmental impacts relevant to public health and safety. For example, the EIS should assess the transportation or use of any hazardous materials that may be involved in the alternatives, and the level of protection afforded residents of the affected environment from construction period and long-term operations associated with the alternatives.
- (16) Recreation areas and opportunities. The EIS should assess the impacts of the alternatives on recreational activities, including impacts on non-site-specific activities, such as hiking and bicycling, and impacts on non-activity- specific sites such as those designated “open space.”

- (17) Environmental Justice. The EIS should address environmental justice considerations as required by Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.”
- (18) Sites of historical, archeological, architectural, or cultural significance. In accordance with Section 106 of the National Historic Preservation Act, 16 U.S.C. 470(f), and its implementing regulations, 36 CFR part 800, the EIS should identify all properties included in or eligible for inclusion in the National Register of Historic Places that may be affected by the preferred alternative and other reasonable alternatives. The EIS also should include documentation of the status of consultation with the appropriate State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO). The EIS should discuss the criteria of adverse effect on historic properties (36 CFR 800.5) with regard to each alternative. The final EIS should include documentation of the status of consultation with the appropriate SHPO(s) or THPO(s). In the event that the Responsible Official, in consultation with the SHPO or THPO, finds that a proposed action will have an adverse effect on such a site, the final EIS also should include documentation of the status of subsequent consultation with the Advisory Council on Historic Preservation.

(19) Climate Change. The EIS should estimate the greenhouse gas emissions associated with the alternatives, as appropriate, and consider mitigation measures. The EIS should also consider the effects that climate change may have on the proposed alternatives, and consider adaptation alternatives, where appropriate.

(20) Hazardous, radioactive, and toxic waste. The EIS should assess the consistency of the alternatives with Federal and state requirements concerning hazardous, radioactive, and toxic waste management in the program or project area.

(i) A description of the impacts of the alternatives and a detailed description of mitigation measures available or planned to avoid, minimize, rectify, reduce over time, or compensate each adverse impact, if not included in the alternatives. Impacts and mitigation measures should be identified in a table as long-term and/or short-term as applicable. This part of the EIS should also include a summary of any irreversible or irretrievable commitments of resources that would be likely to result from the alternatives.

(j) A brief discussion of the relationship between local short-term uses of the environment affected by the alternatives, and the maintenance and enhancement of long-term productivity.

(k) A compilation of all applicable Federal, state, and tribal permits, licenses, and approvals which are required before the proposed action may commence. The final EIS should document compliance with the requirements of all applicable Federal environmental laws, regulations, Executive Orders, and policies. If compliance is not possible by the time of final EIS issuance,

the final EIS should discuss the status of compliance and should specify that all applicable environmental compliance requirements must be addressed prior to project implementation.

(l) The final EIS should provide a synopsis or compilation of substantive comments received on the draft EIS, whether made in writing or orally at a public hearing, and responses to comments. The response to those comments should be consistent with the procedures set forth in CEQ's regulations (40 CFR 1503.4). Comments may be collected and summarized, except for comments by other Federal agencies which should be provided in total and where otherwise required by Federal law or regulation. Before the EIS is put into final form, every effort should be made to resolve significant issues with the Federal or state agencies administering Federal laws. The final EIS will describe such issues, consultations and efforts to resolve such issues, and provide an explanation of why any remaining issues have not been resolved.

#### **Sec. 14. Programmatic Environmental Review.**

(a) A programmatic NEPA analysis is used to assess the environmental impacts of a proposed action that is broad in reach; analysis of subsequent actions that fall within the program may be tiered to such analyses, as described in the CEQ regulations (40 CFR 1502.20 and 1508.28). A programmatic analysis may be used for proposed policies, plans, and programs that address a given geographic area, common environmental impacts to a class of actions, or activities that are not location-specific.

(b) Programmatic NEPA analyses may take the form of a programmatic environmental assessment or environmental impact statement.

- (c) Programmatic NEPA analyses may be used when there are limitations on available information or uncertainty regarding the timing, location, and environmental impacts of subsequent implementing actions.
- (d) A programmatic NEPA analysis may also provide the basis for decisions regarding proposed projects prior to the Council's consideration of the impacts for specific projects (*e.g.*, applicable mitigation measures, identifying alternatives). This analysis can also programmatically address potential cumulative and indirect effects. This provides an opportunity to tier the consideration of the subsequent action to the programmatic analysis, avoiding duplicative efforts.
- (e) The document should identify program-level alternatives and assess the broad program-wide environmental impacts. To the extent information is available, it should also identify the reasonable alternatives to and potential impacts of project-specific Council Actions within the program, and the impacts on resources.
- (f) Where a programmatic environmental document has been prepared, the Responsible Official may examine each project-level action encompassed by the programmatic document to determine whether the project-level action has been sufficiently analyzed in the programmatic document to determine whether and what additional analysis is appropriate.
- (g) For any project-level action, the Council, or project applicant, will prepare additional environmental documentation as required by these Procedures, unless the documentation prepared for the programmatic action satisfies the requirements of these Procedures. Project-level documentation should reference and summarize the programmatic document and limit the discussion to the unique alternatives to, impacts of, and mitigation for the project.

(h) An environmental assessment prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement. An environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered may also be called a “finding of no new significant impact.”

## **Sec. 15. Record of Decision.**

(a) *General.* The Responsible Official will prepare a draft ROD when the Council is prepared to make a final decision on the proposed action. The timing of the agency’s decision will follow the requirements of 40 CFR 1506.10. The draft ROD may be processed concurrently with the final EIS. If the draft ROD is processed subsequently, it will follow the same approval process as a final EIS.

(b) *Contents.* The ROD will include a description of the proposed action and the environmental information specified in 40 CFR 1505.2. A ROD may be conditioned upon the approval of permits, licenses, and/or approvals that were not complete prior to issuance of the ROD.

(c) *Changes*. If the Council wishes to take an action not identified as the preferred alternative in the final EIS, or proposes to make substantial changes to the findings discussed in a draft ROD, the Council will revise the ROD and process it internally in the same manner as EIS approval, in accordance with Section 12(c) of these Procedures.

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